

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ERIC CROCKER and LISA ELWESS, as
Guardian Ad Litem of JOHN DOE; ERIC
CROCKER, individually, and LISA
ELWESS, individually,

Plaintiffs,

v.

SKY VIEW CHRISTIAN ACADEMY; SKY
VIEW ACADEMY, LLC; ORAVAL
HAGERMAN; ABC CORPORATIONS I-X,
inclusive; BLACK AND WHITE
COMPANIES; and DOES I THROUGH XX,

Defendants.

3:08-CV-00479-LRH-VPC

ORDER

Presently before the court is Plaintiffs Eric Crocker and Lisa Elwess's, individually and as guardian ad litem of John Doe, (collectively, "Plaintiffs") Motion to Remand (#3¹). Defendants Sky View Christian Academy, et al., (collectively, "Defendants") have filed an opposition (#7), to which Plaintiffs replied (#9).

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¹ Refers to the court's docket number.

1 **I. Facts and Procedural History**

2 This is a diversity action arising out of alleged abuse of Plaintiffs' minor son while enrolled
3 at Defendants' facility. On September 5, 2008, Defendants filed a notice of removal of their case
4 from the Second Judicial District Court of the State of Nevada (#1). Plaintiffs now move this court
5 to remand the case under 28 U.S.C. § 1447(c) for failure to meet the jurisdictional amount in
6 controversy requirement.

7 **II. Legal Standard**

8 "[A]ny civil action brought in a State court of which the district courts of the United States
9 have original jurisdiction, may be removed by the defendant . . . to the district court of the United
10 States for any district . . . where such action is pending." 28 U.S.C. § 1441(a). Among other
11 reasons, the district courts of the United States have "original jurisdiction" where there is diversity
12 of citizenship between the parties and the amount in controversy, exclusive of interest and costs,
13 exceeds \$75,000. 28 U.S.C. § 1332(a).

14 "If . . . it appears that the district court lacks subject matter jurisdiction, the case shall be
15 remanded." 28 U.S.C. § 1447(c). "Federal jurisdiction must be rejected if there is any doubt as to
16 the right of removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)
17 (*citing Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). The removal
18 statutes are construed restrictively, and any doubts about removability are resolved in favor of
19 remanding the case to state court. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09
20 (1941); *Gaus*, 980 F.2d at 566.

21 "[I]n cases where a plaintiff's state court complaint does not specify a particular amount of
22 damages, the removing defendant bears the burden of establishing, by a preponderance of the
23 evidence, that the amount in controversy exceeds \$[75],000." *Sanchez v. Monumental Life Ins.*
24 *Co.*, 102 F.3d 398, 404 (9th Cir. 1996). This preponderance-of-the-evidence analysis encompasses
25 whether it is "facially apparent" from the complaint that the jurisdictional amount is in
26

1 controversy.” *See Singer v. State Farm Mut. Auto. Ins.*, 116 F.3d 373, 377 (9th Cir. 1997)
2 (delineating the “appropriate procedure for determining the amount in controversy on removal” as
3 described in *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995)). “When the amount is
4 not facially apparent from the complaint, the court may consider facts in the removal petition and
5 may require parties to submit summary-judgment-type evidence relevant to the amount in
6 controversy at the time of removal.” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2006)
7 (internal quotations omitted).

8 **III. Discussion**

9 In their complaint, Plaintiffs allege that “[f]or past and future general damages,” they are
10 each entitled to a “sum in excess of \$10,000.” (Notice of Removal (#1) Ex. A at 9.) In addition,
11 Plaintiffs seek unspecified damages for the following: (1) past and future medical and incidental
12 expenses; (2) past and future loss of income; (3) punitive or exemplary damages; (4) costs of suit
13 and reasonable attorney fees; (5) pre-judgment and post-judgment interest; and (6) “such other and
14 further relief, at law or in equity, as this Court may deem equitable and just.” (Notice of Removal
15 (#1) Ex. A at 9.)

16 Although the Ninth Circuit allows for common-sense judgments as to whether the facts
17 alleged in the complaint show the jurisdictional amount in controversy, *Singer*, 116 F.3d at 377,
18 removal “cannot be based simply upon conclusory allegations.” After review of the complaint and
19 Defendants’ petition for removal, the court finds that the type of common-sense judgment applied
20 in *Allen* is not appropriate in this case. Instead, the court finds that it requires more evidence to
21 determine whether it has subject matter jurisdiction over this case. Jurisdiction will only exist if
22 Defendants can present “summary-judgment-type evidence” to establish by a preponderance of the
23 evidence that this case meets § 1332(a)’s amount in controversy requirement. Consequently,
24 Defendants have twenty days to present evidence to establish that the matter in controversy exceeds
25 \$75,000. Plaintiffs are granted ten days to file an opposition. No reply is required.

1 IT IS THEREFORE ORDERED that Defendants are granted 20 days to establish the
2 minimum amount in controversy for federal jurisdiction. Plaintiffs are granted 10 days to file an
3 opposition. No reply is required.

4 IT IS SO ORDERED.

5 DATED this 14th day of October, 2008.



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7 LARRY R. HICKS
8 UNITED STATES DISTRICT JUDGE
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